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No. 09-502

In The
Supreme Court of the United States

VICTORIA GIAMPA,

Petitioner,

v.

BRYCE C. DUCKWORTH, ESQ., SMITH, LARSEN & WIXOM; CHARLES F. GIAMPA; DISTRICT COURT JUDGE GLORIA SANCHEZ; DISTRICT COURT JUDGE SANDRA L. POMRENZE; DR. LOUIS MORTILLARO; THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; NEVADA SUPREME COURT; NEVADA STATE LEGISLATURE,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nevada

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Victoria Giampa has standing to sue on behalf of her adult children?

2. Whether State Defendants have immunity from suit?

3. Whether Giampa's claims are moot as the children have reached the age of majority?

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STATEMENT OF THE CASE

Petitioner Victoria Giampa ("Giampa") and Charles F. Giampa ("Charles Giampa") were divorced on September 23, 1998. (See Petitioner's Appendix "PA" W). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). Giampa appealed Judge Pomrenze's Order of March 6, 2008. (See PA R). The appeal challenged the order (1) vacating a hearing pertaining to various motions filed by Giampa; (2) the finding of Giampa to be a vexatious litigant; (3) denial of Giampa's stay motion; (4) Giampa's countermotion for order to show cause why Charles Giampa should not be held in contempt; and (5) awarding $1,500 in attorney's fees to Charles Giampa. (See PA I). The Nevada Supreme Court ruled that the only appealable issue was the attorney's fees. (See PA I).

The Nevada Supreme Court affirmed the award of the attorney's fees. (See PA I p. 2). The Nevada Supreme Court noted that Giampa failed to identify if any, orders regarding the motions were issued, but stated that the majority of the motions would be considered non-appealable orders. (See PA I, p. 3). Additionally, the Court stated any orders challenging child custody would be moot as the children are now adults. (See PA I, p. 3).

Giampa filed a petition for rehearing. (See PA F). The Nevada Supreme Court recalled remittitur upon Giampa's filing. (See PA F). The Rehearing was denied. (See PA D). Giampa then filed her Petition for Writ of Certiorari.

THE UNDERLYING ALLEGATIONS

Petitioner Victoria Giampa ("Giampa") and Charles F. Giampa ("Charles Giampa") were divorced on September 23, 1998. (See PA W). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). The Nevada Family Court action centered upon a custody battle between Victoria Giampa and Charles Giampa. Charles Giampa obtained physical custody of the children and allegedly left his teenage children alone in an apartment, and failed to enroll the children in a Christian school. Giampa filed numerous motions regarding the change in physical custody and custodial care of the children by Charles Giampa after the children reached majority age of eighteen. NRS 129.010. Giampa was then declared a vexatious litigant by Judge Pomrenze. (See PA R). Judge Pomrenze additionally ordered Giampa to pay Charles Giampa's legal expenses of $1,500.00.

REASONS FOR DENYING THE PETITION

Petitioner Giampa is attempting to create a constitutional issue where none exists. Giampa presents three questions for review. The first question asks, "What process is constitutionally due a minor child...." Petition p. 4. Clearly, Giampa lacks standing to sue on behalf of her non-minor children. The children are over 18, and no mental disabilities have been alleged in any document. Giampa is not a lawyer, and therefore she has no ability to represent her children.

The second question asks, "Whether the Nevada Supreme Court and Family Court Judges violates

Victoria's liberty interests when they repeatedly deny her relief as an *aggrieved person* after she satisfies her heavy burden of proving a 'clear and indisputable' right to mandamus relief recognized in *Bauman v. U.S. District Court*, 557 F.2d 650 (9th Cir. 1977)?" The Nevada Supreme Court Justices and Family Court Judges are entitled to judicial immunity for their actions taken in their role as judges and justices.

The third question asks "Whether the Nevada Supreme Court's mooting of Victoria's Writ prevents her from seeking a determination that the Court's temporary order was incorrect on the merits when constitutional issues of the minor children's welfare and education were ignored and not addressed through investigation and/or mediation, and whether it would be inequitable to award fees to Attorney Duckworth effectively mooting out claims for child custody and other underlying issues which are still pending?" The children in question had reached the age of majority when this issue was raised and therefore the issue was moot. There was no ability for the Nevada Supreme Court to modify a court order that could not be enforced as the children had reached the age of majority.

GAIMPA HAS NO STANDING TO SUE ON BEHALF OF HER CHILDREN

Giampa has titled the suit on her behalf but sues in reality on behalf of the rights of her children. The Petition asks, "What process is constitutionally due a minor child..." Petition p. 4. Giampa is asking what process was due to her children. Under Article III of the Constitution, federal judicial power extends only to "Cases" and "Controversies." U.S. Const., art. III, § 2,

cl. 1. Article III standing is thus a threshold requirement for federal court jurisdiction. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 559-60, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). At a constitutional minimum, standing requires the party invoking federal jurisdiction to show that it has "suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant, and that the injury can be traced to the challenged action and is likely to be redressed by a favorable decision." *Valley Forge Christian Coll. v. Americans United for Separation of Church and State, Inc.,* 454 U.S. 464, 472, 102 S.Ct. 752, 70 L.Ed.2d 700 (1982) (citations and internal quotation marks omitted). To satisfy the injury in fact requirement, the alleged harm must be "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Lujan,* 504 U.S. at 560 (citations and internal quotation marks omitted). The party invoking federal jurisdiction bears the burden of establishing these elements. *Id.* at 561.

Giampa attempts to assert the rights of her two children, Sarah and Mark Giampa. Giampa fails to state under which rule she is asserting her children's rights but it appears to be pursuant to Federal Rule of Civil Procedure 17(c) which permits a representative, next of friend or guardian ad litem to sue on behalf of a minor child or incompetent individual. FED. R. CIV. P. 17(c). Mark Christopher Giampa was born on August 15, 1989. (See PA FF p. 3). Sarah Elizabeth Giampa was born December 11, 1987. (See PA FF p.3). There is no allegation that either is incompetent in any document. And both children have clearly reached the age of majority, therefore FED. R. CIV. P.

17(c) is inapplicable. See NRS 129.010 stating majority is eighteen years old.

However, even if FED. R. CIV. P. 17(c) were to apply, a non-attorney "has no authority to appear as an attorney for others than himself." *C.E. Pope Equity Trust v. United States,* 818 F.2d 696, 697 (9th Cir. 1987) (citations omitted); *Campbell v. Burt,* 141 F.3d 927, 931 (9th Cir. 1998); *Johns v. County of San Diego,* 114 F.3d 874, 876-77 (9th Cir. 1997). Likewise, "a parent or guardian cannot bring an action on behalf of a minor child without retaining a lawyer." *Johns,* 114 F.3d at 877; *Osei-Afriyie v. Medical College of Pennsylvania,* 937 F.2d 876, 882-83 (3d Cir. 1991). Any person representing himself of herself without an attorney must appear *pro se* for such purpose. Representation may not be delegated to any other person, including a spouse, parent or other relative, or to any other party on the same side who is not represented by an attorney. A non-attorney guardian for a minor or an incompetent person must be represented by counsel. Giampa lacks standing to sue the Nevada State Legislature on behalf of her children. Therefore, Giampa's claims on behalf of her children lack standing and this Court should not grant certiorari over this matter. *Johns,* 114 F.3d at 877; *C.E. Pope Equity Trust,* 818 F.2d at 697.

THE STATE DEFENDANTS ARE ENTITLED TO JUDICIAL IMMUNITY

Giampa is suing Family Court Judges Gloria S. Sanchez and Sandra L. Pomrenze, and the Nevada Supreme Court Justices and all are entitled to judicial immunity, as are the court entities themselves, the Eighth Judicial District Court and its Court Executive

Officer, Edward A. Friedland. The essential allegation against Judge Sanchez and Judge Pomrenze is that the Judges did not rule in her favor, and now Giampa is attempting to sue the Judges. Giampa's Petition at pages 18-19 sums up Giampa's issues. Judge Pomrenze states to Giampa that there is "Not much I can do about the children now. They're either going to be happy, healthy adults or they're not and I have to go, sorry, it's too late fore me to be able to step in their best interests. ... one's emancipated and the other one is going to emancipate in four weeks." Petition pp. 18, 19. Giampa is attempting to sue the family court judges for ruling against her, and the justices for upholding those rulings.

The Supreme Court long has recognized that judges are immune from suit for monetary damages arising from their judicial acts. *See Mireles v. Waco,* 502 U.S. 9, 9 (1991); *Forrester v. White,* 484 U.S. 219, 225-27 (1988); *Stump v. Sparkman,* 435 U.S. 349, 355-56 (1978). Judicial immunity applies unless the judge's actions either were nonjudicial or were taken in the complete absence of jurisdiction. *See Gallas v. Supreme Court of Pennsylvania,* 211 F.3d 760, 768-69 (C.A. 3 (Pa.) 2000) (citing *Mireles,* 502 U.S. at 11-12). Judges-and their employers-are immune from suits for damages arising out of disagreements with the judges' decisions. *Pierson v. Ray,* 386 U.S. 547, 553-54 (1967) ("Few doctrines [are] more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction."); *Mireles v. Waco,* 502 U.S. 9, 11-12 (1991) ("[J]udicial immunity is not overcome by allegations of bad faith or malice....") To the extent that Giampa wishes to file a disciplinary action against Judges and Justices such a complaint must be

filed as such with the Nevada Department of Ethics, not in the United States Supreme Court.

The underlying principle for granting judicial immunity is that judges should be free to make decisions, even controversial decisions, and act upon their personal convictions without fear of personal liability. *Stump v. Sparkman*, 435 U.S. 349, 355-356 (1978). Judicial immunity even shields judges from liability if the judge is accused of committing grave procedural errors or acting maliciously or intentionally in their judicial capacity. *Id.*; *JNC Co. v. Ollason*, 137 B.R. 46, 50-51 (D. Ariz. 1991), *affirmed* 996 F.2d 1225 (9th Cir. 1993). Furthermore, it has been found that judicial immunity applies "however erroneous the act may have been, and however injurious in its consequences it may have proved the plaintiff." *Cleavinger v. Saxner*, 474 U.S. 193, 197 (1985) (quoting *Bradley v. Fisher*, 80 U.S. 335, 347, 20 L.Ed 646, 13 Wall. 335 (1871)).

> Although unfairness and injustice to a litigant may result on occasion, it is a general principle of the highest importance to proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.

Bradley, 80 U.S. at 347.

Absolute judicial immunity applies in this case. After closely reviewing the allegations of the Petition, Giampa's claimed injuries stem directly from court orders, entered by Judges Sanchez and Pomrenze in

their capacities as judges for the Eighth Judicial District Court, Family Court, issued while they were presiding over civil matters involving Giampa, and the affirming of these orders by the Nevada Supreme Court. Immunity applies in this matter as all allegations against the Judges and Justices stem from their court orders.

Giampa alleges that the Judges abridged her Fourteenth Amendment rights. This claim does not escape judicial immunity. *See Stump,* 435 U.S. at 355-60 (holding that a judge is entitled to judicial immunity where his actions were alleged to have deprived litigant of due process); *Rheuark v. Shaw,* 628 F.2d 297, 303-04 (5th Cir. 1980) (holding that a judge is entitled to judicial immunity even if his actions deprived criminal defendant of due process). The affirmation of the Family Court Judges by the Nevada Supreme Court entitles the Justices to absolute immunity as well. The actions of an appellate court are shielded by judicial immunity. This immunity extends to the court itself as the Eighth Judicial District Court can only act through its judges. The judicial defendants are entitled to the protection of absolute judicial immunity from Giampa's claims, and certiorari should not be granted.

GIAMPA'S PETITION WAS MOOT AS TO ALL CHILD CUSTODY ISSUES ONCE THE CHILDREN REACHED THE AGE OF MAJORITY

Article III of the Constitution limits our jurisdiction to "actual, ongoing controversies." *Honig v. Doe,* 484 U.S. 305, 317, 108 S.Ct. 592, 600-01, 98 L.Ed.2d 686 (1988). This limitation gives rise to the doctrines of

standing and mootness. To satisfy Article III's standing requirements, a plaintiff must show that, at the time the suit is filed,

> (1) [he] has suffered an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180-81, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)). A plaintiff must maintain standing throughout the course of litigation. "If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot." *McBryde v. Comm. to Review*, 264 F.3d 52, 55 (D.C. Cir. 2001), *cert. denied*, 537 U.S. 821, 123 S.Ct. 99, 154 L.Ed.2d 29 (2002).

Once the children reached the age of majority they are no longer minors and Family Court has no ability to enforce any orders regarding child custody. The age of majority in Nevada is eighteen. NRS 129.010. The Nevada Supreme Court properly ruled that all issues pertaining to child custody were moot. Certiorari should not be granted as the issues pertaining to child custody were moot upon the children reaching the age of majority.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

DATED this 25th day of November, 2009.

Respectfully submitted,

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